

REMARKS

Claims 1, 5-11, 15-18, 21, and 22 were previously pending in this patent application. Claims 1, 5-11, 15-18, 21, and 22 stand rejected. Herein, Claims 11, 15, 16, 17, and 18 have been amended. Accordingly, after this Amendment and Response, Claims 1, 5-11, 15-18, 21, and 22 remain pending in this patent application. Further examination and reconsideration in view of the claims, remarks, and arguments set forth below is respectfully requested.

Specification

The title has been amended.

Claim Objections

Claim 11 is objected to because this claim twice recites the phrase "with a reflected beam from the surface also being normally incident to the surface."

Herein, Claim 11 has been amended to delete the second instance of the phrase "with a reflected beam from the surface also being normally incident to the surface."

35 U.S.C. § 102(b) Rejections

Claims 1, 5, 8, 9, 10, 11, 15, 17, 18, 21, and 22 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Baker, U.S. Patent No. 4,845,356 (hereafter Baker). These rejections are respectfully traversed.

It is respectfully submitted that Baker fails to disclose all the recitations of Independent Claim 1. In particular, Independent Claim 1 is directed to an apparatus and recites in part, “the optics including...a long working distance microscope objective positioned to receive the light beam as an input from the half-wave plate and output a converging light beam.” (Emphasis added).

At page 4 of the Office Action, it is contended that lens 6 of Baker’s Figure 1 corresponds to the “long working distance microscope objective” of Independent Claim 1.

Applicants respectfully disagree with this contention. All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). The element 6 of Baker’s Figure 1 is simply described as “a lens” in col. 2, line 63, of Baker. In contrast, Independent Claim 1 recites, “a long working distance microscope objective.” Baker is silent with respect to type of lens the element 6 refers to. As a consequence, all the terms “long,” “working,” “distance,” “microscope,” and “objective” of Independent Claim 1 are not considered in judging the patentability of Independent Claim 1 against Baker.

Further, the passage on col. 2, lines 60-63, of Baker provides, “Light...is rendered parallel by a lens 6.” (Emphasis added). In contrast, Independent Claim 1 recites, “a long working distance microscope objective...output a converging light beam.” (Emphasis added).

As a result, Baker fails to disclose all the recitations of Independent Claim 1. Therefore, Independent Claim 1 is not anticipated by Baker and is in condition for allowance.

Dependent Claims 5, 8, 9, and 10 are dependent on allowable Independent Claim 1, which is not anticipated by Baker. Hence, it is respectfully submitted that Dependent Claims 5, 8, 9, and 10 are not anticipated by Baker and are in condition for allowance for at least reasons similar to those discussed above.

With respect to Independent Claims 11 and 21, it is respectfully submitted that Independent Claims 11 and 21 include recitations similar to the reproduced recitations of Independent Claim 1. Moreover, Independent Claims 11 and 21 are rejected on pages 3-5 of the Office Action for reasons similar to those raised against Independent Claim 1. Therefore, it is respectfully submitted that

Independent Claims 11 and 21 are not anticipated by Baker and are in condition for allowance for at least reasons similar to those discussed above.

Dependent Claims 15, 17, 18, and 22 are dependent on one of allowable Independent Claims 11 and 21, which are not anticipated by Baker. Hence, it is respectfully submitted that Dependent Claims 15, 17, 18, and 22 are not anticipated by Baker and are in condition for allowance for at least reasons similar to those discussed above.

Claims 1, 5, 8, 9, 10, 11, 15, 17, 18, 21, and 22 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Toida, U.S. Patent No. 5,428,447 (hereafter Toida). These rejections are respectfully traversed.

It is respectfully submitted that Toida fails to disclose all the recitations of Independent Claim 1. In particular, Independent Claim 1 is directed to an apparatus and recites in part, "optics that focus the light beam on a surface to be measured such that a normally incident beam deflection is provided, the optics including polarization optics such that the incident beam has a first polarization and a reflected beam from the surface has a second polarization different from the first polarization, the optics including...a long working distance microscope objective positioned to receive the light beam as an input from the half-wave

plate and output a converging light beam...; and a position sensitive detector positioned to detect the reflected beam." (Emphasis added).

At page 4 of the Office Action, it is contended that lens 124 of Toida's Figure 7 corresponds to the "long working distance microscope objective" of Independent Claim 1.

Applicants respectfully disagree with this contention. All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). The element 124 of Toida's Figure 7 is simply described as the "lens" in col. 29, line 20, of Toida. In contrast, Independent Claim 1 recites, "a long working distance microscope objective." Toida is silent with respect to type of lens the element 124 refers to. As a consequence, all the terms "long," "working," "distance," "microscope," and "objective" of Independent Claim 1 are not considered in judging the patentability of Independent Claim 1 against Toida.

Further, the passage on col. 29, lines 19-21, of Toida provides, "The wavefront-matched laser beam a25 is formed by the lens 124 into the laser beam 26 having the shape of a conical beam." (Emphasis added). In contrast, Independent Claim 1 recites, "a long working distance microscope objective...output a converging light beam." (Emphasis added).

At page 7 of the Office Action, it is contended that element 127 of Toida's Figure 7 corresponds to the "surface" in the recitation "optics that focus the light beam on a surface to be measured such that a normally incident beam deflection is provided, the optics including polarization optics such that the incident beam has a first polarization and a reflected beam from the surface" (emphasis added) of Independent Claim 1. However, the passage on col. 30, lines 9-11, of Toida provides, "The sample 122 is helically displaced by the scanning means 127, and the entire circumferential surface of the sample 122 is helically scanned with the laser beam a27." (Emphasis added). That is, element 127 is a scanning means instead of being a surface while the sample 122 has circumferential surface that is scanned with the laser beam a27.

Additionally, the passage on col. 29, lines 46-48, of Toida provides, "The laser beam, which has passed through the sample 122 and has been radiated out of the sample 122, is reflected by the concave mirror 134." (Emphasis added). Also, the passage on col. 9, lines 52-57, of Toida states, "The laser beam, which has been reflected by the concave mirror 124, again impinges upon the sample 122. The laser beam, which has again impinged upon the sample 122, passes through the sample 122 and is radiated out of the sample 122 as a laser beam a29." (Emphasis added). That is, the laser beam passes through the surface of sample 122 and is reflected by the concave mirror 134 instead of being reflected by the surface of the sample 122. In contrast, Independent Claim 1 recites, "optics that focus the light beam on a surface to be measured such that

a normally incident beam deflection is provided, the optics including polarization optics such that the incident beam has a first polarization and a reflected beam from the surface has a second polarization different from the first polarization.” (Emphasis added).

At page 8 of the Office Action, it is contended that element 135 of Toida's Figure 7 corresponds to the “position sensitive detector” in the recitation “a position sensitive detector positioned to detect the reflected beam” (emphasis added) of Independent Claim 1. However, the passage on col. 29, line 67 to col. 30, line 8, of Toida provides, “The components of the laser beam having passed through the sample 122 without being scattered and the laser beam a28 having the frequency $0+\Delta$, which components have the identical direction of polarization, are caused by the polarizing plate 130 to interfere with each other. The two-dimensional intensity distribution image of the interference laser beam a30, which has thus been obtained, is projected onto the two-dimensional parallel operation type of image sensor 135.” (Emphasis added). That is, element 135 receives an interference pattern (of a laser beam that passed through the sample 122 and interferes with a laser beam a28 having the frequency $0+\Delta$) instead of receiving a reflected beam from the surface. In contrast, Independent Claim 1 recites, “a reflected beam from the surface...a position sensitive detector positioned to detect the reflected beam.” (Emphasis added).

As a result, Toida fails to disclose all the recitations of Independent Claim 1. Therefore, Independent Claim 1 is not anticipated by Toida and is in condition for allowance.

Dependent Claims 5, 8, 9, and 10 are dependent on allowable Independent Claim 1, which is not anticipated by Toida. Hence, it is respectfully submitted that Dependent Claims 5, 8, 9, and 10 are not anticipated by Toida and are in condition for allowance for at least reasons similar to those discussed above.

With respect to Independent Claims 11 and 21, it is respectfully submitted that Independent Claims 11 and 21 include recitations similar to the reproduced recitations of Independent Claim 1. Moreover, Independent Claims 11 and 21 are rejected on pages 3-5 of the Office Action for reasons similar to those raised against Independent Claim 1. Therefore, it is respectfully submitted that Independent Claims 11 and 21 are not anticipated by Toida and are in condition for allowance for at least reasons similar to those discussed above.

Dependent Claims 15, 17, 18, and 22 are dependent on one of allowable Independent Claims 11 and 21, which are not anticipated by Toida. Hence, it is respectfully submitted that Dependent Claims 15, 17, 18, and 22 are not

anticipated by Toida and are in condition for allowance for at least reasons similar to those discussed above.

35 U.S.C. § 103(a) Rejections

Claims 6, 7, and 16 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Baker, U.S. Patent No. 4,845,356 (hereafter Baker). These rejections are respectfully traversed.

Dependent Claims 6, 7, and 16 are dependent on one of allowable Independent Claims 1 and 11, which are patentable over Baker. Hence, it is respectfully submitted that Dependent Claims 6, 7, and 16 are patentable over Baker and are in condition for allowance for at least reasons similar to those discussed above.

Claims 6, 7, and 16 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Toida, U.S. Patent No. 5,428,447 (hereafter Toida). These rejections are respectfully traversed.

Dependent Claims 6, 7, and 16 are dependent on one of allowable Independent Claims 1 and 11, which are patentable over Toida. Hence, it is respectfully submitted that Dependent Claims 6, 7, and 16 are patentable over

Toida and are in condition for allowance for at least reasons similar to those discussed above.

CONCLUSION

It is respectfully submitted that the above claims, arguments and remarks overcome all rejections and objections. All remaining claims (Claims 1, 5-11, 15-18, 21, and 22) are neither anticipated nor obvious in view of the cited references. For at least the above-presented reasons, it is respectfully submitted that all remaining claims (Claims 1, 5-11, 15-18, 21, and 22) are in condition for allowance.

The Examiner is urged to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Please charge any additional fees or apply any credits to our PTO deposit account number: 50-4160.

Respectfully submitted,

MURABITO HAO & BARNES, LLP

Dated: May 25, 2010

/Jose S. Garcia/

Jose S. Garcia
Registration No. 43,628

Two North Market Street, Third Floor
San Jose, CA 95113
(408) 938-9060